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CASES.

Supreme Court of the United States.

OCTOBER TERM, 1948.

No. 676.

FRANK BAILEY ET AL., *Intervenors-Petitioners,*

v.

EDWARD O. PROCTOR ET AL., *Receivers.*

ON APPLICATION OF RECEIVERS AND ATTORNEYS FOR ALLOWANCES.

BRIEF OF RESPONDENT PUTNAM, BELL, DUTCH & SANTRY IN OPPOSITION TO PETITION FOR CERTIORARI.

Statement.

So far as this respondent is concerned, the petitioners seek review of a decision of the Court of Appeals for the First Circuit, January 17, 1949 (R. 61), affirming an order of the United States District Court for the District of Massachusetts entered July 29, 1948, allowing the claim of Putnam, Bell, Dutch & Santry for services (R. 30). This claim is in the amount of $18,000 for services, plus minor disbursements, and came before the District Court on the petition of the receivers, stating that they had approved

the claim, for leave to pay it (R. 4). The per curiam opinion of the Court of Appeals is set out at R. 60, 61, and reported in 171 F. (2d) 980.

With respect to the order of the District Court so far as it concerns this claim, appellants stated as their only point on appeal to the Court of Appeals:

> "6. The District Court erred in allowing the claim of Putnam, Bell, Dutch & Santry without requiring that the amount of the claim, as allowed, be deducted from the aggregate compensation allowed to receivers" (R. 57).

In their petition to this Court, petitioners claim that the allowance to the Putnam firm was based on an inadequate record and that the District Judge erred in refusing, so petitioners allege, to permit petitioners to show the services performed by the attorneys and other relevant matters (Petition for Certiorari, points 1 and 4, pages *i*, *ii*).

Statement of the Case.

The claim by Putnam, Bell, Dutch & Santry is for services rendered as attorneys to the receivers in the case of *Murphy, Trustee of International Power Securities Corporation,* v. *Hanlon et als., Trustees of Aldred Investment Trust,* which was brought in the Superior Court for Suffolk County, Commonwealth of Massachusetts, and appealed (by Murphy) to the Supreme Judicial Court for the Commonwealth. This firm was counsel for the Trust in the conduct of the case prior to the receivership and continued thereafter as associate counsel.

The case was an action to rescind the exchange in 1939 of certain securities between International Power Securities Corporation and Aldred Investment Trust. At the

time of the exchange some of the directors and trustees and also officers were interlocking. The bill alleged domination by Aldred, fraud, and breach of fiduciary duty (Ex. 3, pp. 2-3 (R. 55)).

As the brief to the Massachusetts Supreme Court (Ex. 3) shows, as does also the record (Ex. 2, R. 55), the defense of the case required careful preparation both as to facts and law, including extended consideration of the law as to interlocking directors, critical examination of balance sheets, financial statements, corporate records, oral and written depositions. The case was tried for five days in the Superior Court, requests for findings were prepared, the case was argued before the trial judge, an extended brief was filed to the Supreme Judicial Court and the case was argued there (R. 15, Ex. 2). After the appointment of the receivers, partners of the appellee firm (Mr. Dutch and Mr. Bancroft) rendered very extensive assistance to the receivers in these various matters (R. 14, 15, 33-35).

In their petition, intervenors erroneously state that Richard Bancroft was "an associate of the Putnam firm" (Petition, p. 9; see also p. 10). He was a member of the firm, and the record clearly so states (R. 14).

The amount at issue was approximately $440,000 (R. 15), and as is shown by the careful opinion of Qua, C.J., the case was involved, and affirmance was "notwithstanding some evidence tending to raise doubts." *Murphy* v. *Hanlon*, 322 Mass. 683, 693 (1948).

Point Relied Upon.

The affirmance by the Court of Appeals of the allowance by the District Court of the petition by the receivers for leave to pay the claim of Putnam, Bell, Dutch & Santry, which the receivers had approved, is free from error.

Argument.

I. THERE IS NO ERROR IN ALLOWING THE CLAIM OF THE PUTNAM FIRM WITHOUT REQUIRING THAT THE AMOUNT BE DEDUCTED FROM THE AGGREGATE COMPENSATION ALLOWED TO THE RECEIVERS.

The only point stated on appeal to the Court of Appeals, so far as the claim of the Putnam firm is concerned (quoted *supra*, at p. 2), is not urged to this Court by petitioners.

There is no dispute that services were rendered by these appellees; their nature and extent is explained as appears in the record (R. 14-15, 33-34). The propriety of the use by the receivers of the services of this appellee is not questioned. The Court was fully aware of the situation when compensation was awarded to the receivers, and their statement in support of their petition took this claim into account (R. 15, 35). No reason exists why the order approving this claim should require that the amount allowed should be deducted from the compensation allowed to the receivers.

II. THE ALLOWANCE OF THE CLAIM OF THE PUTNAM FIRM IS SUPPORTED BY A PROPER RECORD.

1. The petitioners for certiorari are in error in stating to this Court that the District Judge refused to permit petitioners to show the services performed by the receivers and attorneys. They state in their brief, at page 20, that "the learned District Court likewise refused to receive proof of the services performed" by the Putnam firm, referring to R. 35. The record shows that the Court stated:

> "I do not think I want to take the testimony of Mr. Dutch or Mr. Bancroft. I am familiar with it. I am confronted with the same problem that Mr. Gould pre-

> sents, and I do not think I am going to need anything further about their services, unless there is something they want to say."

The attorney for the petitioners raised no objection and did not ask for the right to examine either Mr. Dutch or Mr. Bancroft, who were present in the courtroom. The obligation rested on the intervenors to state their grounds of objection to the claim of Putnam, Bell, Dutch & Santry, and the other side would then reply. The Court stated: "The petition is filed and generally we permit the opposition to be heard first." The attorney for the intervenors then stated: "I certainly have no objection to that. I am prepared to go ahead on that basis" (R. 36).

2. The petitioners for certiorari are in error in stating to this Court as to the allowance of $18,000 to the Putnam firm:

> "All there is in the record on the subject is the statement of Mr. Proctor, one of the receivers, that prior to receivership the Putnam firm represented the Trust in the Murphy case; that that case took five days for trial; that during the receivership a member of the firm assisted Mr. Proctor in preparing findings and a brief in that case, and that the firm did 'a considerable amount of work'" (Petition, p. 5).

The statement in support of receivers' petition contains the following:

> "Prior to the receivership, on December 8, 1941, John J. Murphy, trustee of International Power Securities Corporation, brought a bill in equity against the trustees of Aldred Investment Trust in the Suffolk Superior Court to rescind an exchange of securi-

ties between the Corporation and the Trust. . . . The Trust prior to the receivership was represented by Putnam, Bell, Dutch & Santry; more particularly by Messrs. Dutch and Bancroft of that firm. Depositions had been taken by both sides.

"The receivers were joined as parties respondent March 13, 1945 and Mr. Proctor immediately thereafter filed an appearance for the receivers and from that time on conducted the litigation for the defendants.

"As early as February 20, 1945 the receivers had conferred with Messrs. Dutch and Bancroft relative to this litigation. . . .

"Mr. Proctor, assisted by Mr. Bancroft, prepared requests for findings and argued the case before the judge in Springfield June 22, the argument taking practically the full day. . . . The plaintiff appealed. Mr. Proctor, with Mr. Bancroft's assistance, prepared a sixty-two-page brief and argued the case before the Full Court January 6, 1948" (R. 14, 15).

It was stated by Mr. Proctor at the hearing before the District Judge:

"Messrs. Putnam, Bell, Dutch & Santry had been Hanlon's attorneys when he was in control of the Trust and the Murphy case was brought while he was head of it. They had, accordingly, done a considerable amount of work up to the time of the receivership and had prepared quite an extensive memorandum both on the facts and the law. The receivers immediately took charge of the litigation, and I entered an appearance for the receivers and conducted the litigation thereafter. But it was the kind of case, both in connection with its conduct and the amount involved,

that required very careful preparation, not only on the law but in the analysis of the facts, etc. The services consisted of conferences that Mr. Dutch had with me and very active preparation and trial of the case, preparation of requests for findings, and arguments and briefs before the Supreme Judicial Court. Mr. Bancroft actively assisted me there; and it seems to me that the charges are reasonable" (R. 34).

The District Court also had before it the record of the case on appeal and the brief to the Massachusetts Supreme Court (R. 53, 55).

3. It is submitted that the District Court properly took into account his own familiarity with the proceedings.

In *Gochenour* v. *Cleveland Terminals Bldg. Co.*, 142 F. (2d) 991 (C.C.A. 6, 1944); cert. den. 323 U.S. 767, an allowance to appellees, attorneys, was affirmed. The Court states at page 995:

> "The trial judge is familiar with proceedings in his court and also has expert knowledge as to the value of legal services. He should, therefore, have a broad discretion on the subject since he has a far better means of measuring what is just and reasonable than an appellate court. *Trustees* v. *Greenough*, 105 U. S. 527, 537, 26 L. Ed. 1157. The trial judge stated that the court had personal knowledge and a full understanding of the nature of the problems involved in the litigation here and the character of the services to be rendered by appellees and that the court knew the nature, extent and value of the legal services required and the type of services performed."

To the same effect is *Bailey* v. *McLellan,* 159 F. (2d) 1014, 1016 (C.C.A. 1, 1947); cert. den. 331 U.S. 834.

III. There was no abuse of discretion.

The receivers, who were thoroughly familiar with the services rendered, by virtue of their conduct of the litigation, and who are in an entirely independent position, approved the claim (R. 4, 33). The services rendered are summarized by the receivers in the record (R. 4, 14-15, 33-35). The Court was familiar with their nature and extent (R. 35).

Under these circumstances the approval by the District Court of the petition for leave to pay the claim of this appellee cannot be called an abuse of discretion (R. 4).

Conclusion.

There is no error in the action of the Court of Appeals in affirming the order of the District Court that the petition of the receivers for leave to pay the claim of this respondent be allowed, and the petition for writ of certiorari to review that action should be denied.

Respectfully submitted,

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